रजिस्ट्री सं० डी-221

REGISTERED NO. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 51] नई दिल्ली, शुक्रवार, अप्रैल 9, 1965/चैत्र 19, 1887

No. 51] NEW DELHI, FRIDAY, APRIL 9, 1965/CHAITRA 19, 1887

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

INCOME-TAX

New Delhi, the 5th April 1965

G.S.R. 588.—Whereas the annexed Convention between the Republic of India and the Republic of Austria for the avoidance of double taxation with respect to taxes on income has been ratified and the Instruments of Ratification exchanged, as required by Article XXI of the said Convention;

Now, therefore, in exercise of the powers conferred by Section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all provisions of the said Convention shall be given effect to in the Union of India.

ANNEXURE

Convention between the Republic of India and the Republic of Austria for the avoidance of double taxation with respect to taxes on income

The Republic of India and the Republic of Austria, desiring to conclude a Convention for the avoidance of double taxation with respect of taxes on income,

Have agreed as follows:

Article I

(1) The taxes which are the subject of the present Convention are:

(a) In Austria:

(i) the Einkommensteuer (income tax);

(ii) the Korperschaftsteuer (corporation tax);

(iii) the Beitrag vom Einkommen zur Forderung des Wohnbaues und fur Zwecke des Familienlastenausgleiches (Contribution from income for the promotion of residential building and for the equalisation of family burdens);

(hereinafter referred to as "Austrian tax");

(b) In India:

(i) the income-tax,

(ii) the super-tax and

(iii) the surcharge

imposed under the Income-tax Act, 1961 (43 of 1961);

(hereinafter referred to as "Indian tax").

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in Austria or in India subsequently to the date of signature of the present Convention.

Article II

(1) In the present Convention, unless the context otherwise requires:

(a) the terms "one of the territories" and "the other territory" mean Austria or India as the context requires;

(b) the term "person" includes individuals, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

(c) the term "company" means any entity which is treated as a body corporate under the Austrian law or as a company under the Indian law for tax purposes;

(d) the term "tax" means Austrian tax or Indian tax, as the context requires;

(f) the terms "Austrian enterprise" and "Indian enterprise" mean, respectively, a person who is resident ("Wohnsitz" or "gewohnlicher Aufenthalt") in Austria for the purposes of Austrian tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident ("Wohnsitz" or "gewohnlicher Aufenthalt") in Austria for the purposes of Austrian tax. A company shall be regarded as resident in Austria if it is incorporated in Austria or its business is wholly managed and controlled in Austria; a company shall be regarded as resident in India if it is incorporated in India or its business is wholly managed and controlled in India;

(f) the terms "Austrian enterprise" and "Indian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Austria and an industrial or commercial enterprise or undertaking carried on by a resident of India, and the terms

"enterprise of one of the territories and enterprise of the other territory" mean an Austrian enterprise or an Indian enterprise, as the context requires;

(g) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on

(aa) The term "permanent establishment" shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources, and a permanent sales exhibition.

(bb) An enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on in that other territory a construction, installation or assembly project or the like.

(cc) The use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment.

(dd) A person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment of that enterprise in the first-mentioned territory, if

1. he has and habitually exercises in the first-mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

2. he habitually maintains in the first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

3. he habitually secures orders in the first-mentioned territory exclusively or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

(ee) A broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be permanent establishment of the enterprise in the last-mentioned territory.

(ff) The fact that a company, which is a resident of one of the territories has a subsidiary company which either is a resident of the other territory or carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself, constitute that subsidiary company a permanent establishment of its parent company.

(h) the term "competent authority" means, in the case of Austria, the Federal Ministry of Finance and, in the case of India, the Central Government in the Ministry of Finance, Department of Revenue.

(2) In the application of the provisions of this Convention in one of the territories any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that territory relating to the taxes which are the subject of this Convention.

Article III

(1) Subject to the provisions of paragraph (3) below, tax shall not be levied in one of the territories on the industrial or commercial profits of an enterprise of the other territory unless profits are derived in the first-mentioned territory through a permanent establishment of the said enterprise situated in the first-mentioned territory. If profits are so derived, tax may be levied in the first-mentioned territory on the profits attributable to the said permanent establishment.

(2) There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment. In any case, where the ascertainment of the correct amount of profits attributable to a permanent establishment presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

(3) The provisions of paragraph (1) of this Article shall not be construed as preventing the taxation in one of the territories in pursuance of the present Convention and in conformity with the laws of that territory of income (e.g., dividends, interest, capital gains, fees for technical services, income from the operation of aircraft, rents or royalties or income from immovable property) derived from sources therein by a resident of the other territory even if such income is not attributable to a permanent establishment situated in that former territory.

Article IV

Where

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which but for those conditions would have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article V

(1) Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircraft is operated wholly or mainly between places within that other territory.

(2) Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

(3) Income derived from the operation of aircraft by an Indian enterprise shall likewise not be subjected to business tax (Gewerbesteuer) in Austria.

Article VI

(1) Royalties derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

(2) In this Article, the term "royalty" means any royalty or other like amount received as consideration for the right to use copy-rights, artistic or scientific works, cinematographic films, patents, models, designs, plans, secret processes or formulae, trademarks and other like property or rights.

Article VII

Amounts paid by an enterprise of one of the territories for technical services furnished by an enterprise of the other territory shall not be subject to tax by the first-mentioned territory except in so far as such amounts are attributable to activities actually performed in the first-mentioned territory. In computing the income so subject to tax, there shall be allowed as deductions the expenses incurred in the first-mentioned territory in connection with the activities performed in that territory.

Article VIII

Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed only in the first-mentioned territory.

Article IX

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

Article X

Income from immovable property may be taxed only in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other place of extraction of natural resources shall be regarded as income from immovable property.

Article XI

(1) Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed only in the territory in which the capital asset is situated at the time of such sale, exchange or transfer. For this purpose, the situs of the shares of a company shall be deemed to be in the territory where the company is incorporated.

(2) In this Article the term "capital asset" does not include movable property in the form of personal effects (*e.g.*, wearing apparel, jewellery and furniture) held for personal use by the taxpayer or any member of his family dependent on him.

Article XII

(1) Remuneration for services rendered (other than pensions and annuities) paid out of public funds of India shall not be taxed in Austria unless the payment is made to a national of India for services rendered therein.

(2) Remuneration for services rendered (other than pensions and annuities) paid out of public funds of India shall not be taxed in Austria unless the payment is made to a national of Austria for services rendered therein.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties or political subdivisions thereof for purposes of profit.

(4) The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration other than pensions and annuities, paid by the Austrian National Bank, the Austrian Federal Railways and the Austrian Postal and Telegraphal Administration and by the Reserve Bank of India, the Public Railways Authorities and the Postal Administration of India.

Article XIII

(1) Any pension or annuity derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

(2) In this Article, the term "pension" means periodic payments made in consideration of services rendered or by way of compensation for injuries received. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time.

Article XIV

(1) Subject to Article XII, profits or remuneration from professional services or from services as an employee derived by an individual who is a resident of one of the territories may be taxed in the other territory only if such services are rendered in that other territory.

(2) An individual who is a resident of Austria shall not be taxed in India on profits or remuneration referred to in paragraph (1) if—

(a) he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during the relevant "previous year",

(b) the services are rendered for or on behalf of a resident of Austria,

(c) the profits or remuneration are subject to Austrian tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

(3) An individual who is a resident of India shall not be taxed in Austria on profits or remuneration referred to in paragraph (1) if—

(a) he is temporarily present in Austria for a period or periods not exceeding in the aggregate 183 days during a taxable year,

(b) the services are rendered for or on behalf of a resident of India.

(c) the profits or remuneration are subject to Indian tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Austrian tax.

(4) Where an individual permanently or predominently performs services on ships or aircraft operated by an enterprise of one of the territories, such services shall be deemed to be performed in that territory.

Article XV

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall not be taxed in that other territory in respect of that remuneration.

Article XVI

(1) An individual from one of the territories who is temporarily present in the other territory solely

(a) as a student at a university, college or school in that other territory,

(b) as a business apprentice, or

(c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation

shall not be taxed in the other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for an employment which he exercises in that other territory for the purposes of practical training.

(2) An individual from one of the territories who is temporarily present in the other territory for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former territory or an organisation referred to in paragraph (1) sub-paragraph (c) above, solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be taxed in that other territory on remuneration for such period, unless the amount thereof exceeds 50,000—Austrian shillings or its equivalent in Indian currency.

(3) An individual from one of the territories temporarily present in the other territory under arrangements with the Government of that other territory solely for the purpose of training, research or study shall not be taxed in that other territory under arrangements wit hthe Government of that other territory solely unless the amount thereof exceeds 80,000—Austrian shillings or its equivalent in Indian currency.

Article XVII

(1) The laws in force in either of the territories will continue to govern the assessment and taxation of income in the respective territories except where express provision to the contrary is made in this Convention.

(2) Income from sources within Austria which in accordance with this Convention may be subjected to tax in Austria either directly or by deduction shall not be subject to Indian tax.

(3) Income from sources within India which in accordance with this Convention may be subjected to tax in India either directly or by deduction shall not be subject to Austrian tax.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article the items of income which under the laws of the two territories should be taken into account for calculating the rate of tax to be imposed shall continue to be so taken into account.

Article XVIII

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

Article XIX

(1) Where a resident of one of the territories shows proof that the action of the taxation authorities of the other territory has resulted or will result in double taxation contrary to the provisions of the present Convention, he shall be entitled to present his case to the competent authority of the territory of which he is a resident. Should his claim be deemed worthy of consideration, the competent authority to which the claim is made shall endeavour to come to an agreement with the competent authority of the other territory with a view to avoiding double taxation.

(2) Should any difficulty or doubt arise as to the interpretation or application of the present Convention the competent authorities of both territories may settle the question by mutual agreement.

Article XX

The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

Article XXI

(1) The present Convention shall be ratified.

(2) The instruments of ratification shall be exchanged at Vienna as soon as possible.

(3) The present Convention shall enter into force upon the exchange of instruments of ratification and shall thereupon have effect—

(a) in respect of Austrian tax, for taxes which are levied for the calendar year 1962 and for subsequent calendar years, and

(b) in respect of Indian tax, in relation to the income for any "previous year" relevant to any year of assessment beginning on or after the 1st April 1963.

Article XXII

The present Convention shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th of June in any calendar year after 1965 give to the other Contracting Party notice of termination and, in such event, the present Convention shall cease to be effective—

(a) in respect of Austrian tax, for taxes which are levied for the calendar years following the year in which the notice of termination is given, and

(b) in respect of Indian tax, in relation to the income which arises on or after the 1st of January following the year in which the notice of termination is given.

In witness whereof the undersigned Plenipotentiaries have signed the present Convention.

Done in duplicate at New Delhi, in the English language,
This 24th day of September, 1963.

For the Republic of India:
SHRIMATI TARKESHWARI SINHA,
Deputy Minister of Finance,
Government of India.

For the Republic of Austria:
DR. GEORGE SCHLUMBERGER,
Ambassador of the Republic
of Austria in India.

NEW DELHI,
the 24th September, 1963

Dear Sir,

The Convention between the Republic of India and the Republic of Austria for the avoidance of Double Taxation with respect to taxes on income being signed today, I have the honour, on behalf of the Government of India, to inform you that where a resident of one of the territories fulfils an order for the sale of machinery to a resident of the other territory and it is incidental to the sale of the machinery that a person or persons employed by the resident of the first-mentioned territory should proceed to that other territory for assisting in the installation of the machinery therein, such activity shall not be deemed to constitute a permanent establishment unless it is carried on for a period exceeding one month or the expenses incurred on such activity are more than ten per cent of the total sale price for the order.

I shall be grateful if you confirm your agreement to the above understanding of the provisions of Article II(1)(g)(bb) of the said Convention, and that in such case, this note and your reply thereto shall be deemed to be part of the Convention.

Please accept, Mr. Ambassador, the assurance of my high consideration.

SHRIMATI TARKESHWARI SINHA

To

His Excellency Dr. George Schlumberger,
Ambassador of the Republic
of Austria in India,
New Delhi.

NEW DELHI,
the 24th September, 1963

Madam,

With reference to the Convention, signed today, between the Republic of Austria and the Republic of India for the avoidance of Double Taxation with respect to taxes on income, you have informed me of the following:

"The Convention between the Republic of India and the Republic of Austria for the avoidance of Double Taxation with respect to taxes on income being signed today, I have the honour, on behalf of the Government of India, to inform you that where a resident of one of the territories fulfils an order for the sale of machinery to a resident of the other territory and it is incidental to the sale of the machinery that a person or persons employed by the resident of the first-mentioned territory should proceed to that other territory for assisting in the installation of the machinery therein, such activity shall not be deemed to constitute a permanent establishment unless it is carried on for a period exceeding one month or the expenses incurred on such activity are more than ten per cent. of the total sale price for the order.

I shall be grateful if you confirm your agreement to the above understanding of the provisions of Article II(1)(g)(bb) of the said Convention, and that in such case, this note and your reply thereto shall be deemed to be part of the Convention."

I have the honour to inform you that this proposal meets my approval. Your note of today's date and my reply thereto shall therefore be part of the Convention.

Accept, Madam Minister, the assurance of my high consideration.

DR. GEORGE SCHLUMBERGER

To

Shrimati Tarkeshwari Sinha,
Deputy Minister of Finance,
Government of India,
New Delhi.

[No. 29/F. No. 8(1)-62/TPL.]

JAMUNAA PRASAD SINGH, Addl. Secy.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1966